

Decision **PROPOSED DECISION OF ALJ SIMON** (Mailed 3/18/14)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to continue implementation and administration of California Renewables Portfolio Standard Program.

Rulemaking 06-05-027
(Filed May 25, 2006)

**DECISION GRANTING PETITION FOR MODIFICATION OF
DECISION 11-01-016, MODIFYING DECISION 06-10-050****1. Summary**

This decision modifies Decision (D.) 11-01-016 in order to allow Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company to make payment, and record the payment in memorandum accounts, for certain consulting work regarding the renewables portfolio standard program that was performed for the Commission pursuant to authorization originally provided by D.06-10-050.

This proceeding is closed.

2. Procedural Background

In Decision (D.) 06-10-050, the Commission authorized the Executive Director to “hire and manage one or more contractors to perform tasks described in [the decision] for the purpose of advancing [renewables portfolio standard] RPS Program goals.” The decision:

- set a limit on the amount that could be expended annually;
- allocated responsibility for payment among Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E);

- authorized each of these investor-owned utilities (IOUs) to utilize a memorandum account to record the costs; and
- allowed the three IOUs to record such costs, for which they could apply for recovery through rates, until December 31, 2010.

In D.11-10-016, the Commission on its own motion modified D.06-10-050 to extend the time for the three IOUs to record the costs to December 31, 2011. The extension of time did not increase the total amount of the costs that could be recorded.

On January 13, 2014, PG&E, SCE, and SDG&E jointly filed the Petition for Modification of Decision 11-01-016 (Petition).¹ No responses to the Petition were filed.

¹ The content of petitions for modification is governed by Rule 16.4(b) of the Commission's Rules of Practice and Procedure. This section provides:

A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

The Petition filed in this matter does not comply with two of these requirements. It does not propose specific wording for the modifications. Nor is the allegation of the existence of an invoice for work performed in accordance with the prior authorization, but not yet paid, supported by declaration or affidavit.

In view of the lapse of time since the work sought to be paid for was performed, and the lack of opposition to the Petition, the Commission is deciding this Petition on the merits. Failures by parties to comply with the requirements of Rule 16.4 will not, however, be excused as a general matter.

3. Discussion

3.1. Modification Requested by the Petition

The Petition seeks a change to D.11-01-016 to extend the time allowed for payment of costs for authorized services that were performed in 2010 and 2011.² The Petition proposes that the IOUs be allowed to make payment and record the payment in their respective Renewables Portfolio Standard Costs Memorandum Accounts (RPSCMAs) up to May 30, 2014.

The Petition states that this change is necessary because one invoice for authorized work performed in 2010 and 2011 was not presented to the IOUs prior to the December 31, 2011 date set by D.11-01-016. The IOUs are not authorized to make payments for this work after that date, and thus this invoice cannot be paid without modification of the prior decisions.

No party opposes the Petition. The IOUs are requesting the modification in order to effectuate the clear intent of the prior decisions, which authorized payment for consultant work done to advance the RPS program. Although the extension of more than two years is not ideal, there is no reason to believe that it is caused by anything other than administrative difficulties. The proposed modification should be granted. In order to provide enough time for this modification to be adopted and the payment to be made, the date for the IOUs to make payment and record such payment in their RPSCMAs should be modified to September 30, 2014.

² Although the requested change to D.11-01-016 necessarily will also result in modification of D.06-10-050, we adopt the Petition's presentation of D.11-01-016 as the appropriate decision for modification.

3.2. Timeliness of Petition

Independent of the merits of any petition for modification, it must be timely filed. Rule 16.4(d) provides that:

Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

The Petition was filed approximately three years after the effective date of D.11-01-016. The IOUs state that they could not have filed the Petition within the one-year period because they were not aware that there was an outstanding invoice until after that time period had passed.³

The three IOUs present a legitimate reason for the filing of the Petition more than one year after the effective date of D.11-01-016. The Petition is therefore timely filed.

3.3. SDG&E's RPSCMA

Although SDG&E established its RPSCMA in accordance with D.06-10-050, that account was eliminated and its balances transferred to SDG&E's Energy Resource Recovery Account (ERRA) by D.11-10-029, Ordering Paragraph (OP) 8. In order to carry out the requirements of D.06-10-050,

³ The Petition states that the Commission's Energy Division transmitted the invoice at issue to PG&E and SDG&E in December 2013.

D.11-01-016, and this decision, SDG&E should establish a new RPSCMA by submitting a Tier 1 advice letter within 30 days of the date of this decision.⁴

3.4. Modifications to D.11-01-016

The text, findings of fact, and conclusions of law of D.11-01-016 require no modification. Ordering Paragraph 1 of D.11-01-016 orders relevant modifications to D.06-10-050 that are set out in Appendix A of D.11-06-016. Appendix A of D.11-06-016 should therefore be modified as follows.

Paragraph 1 of Appendix A

1. At mimeo pages 53-54:

a. From:

“The IOUs are authorized to record these RPS third party technical support costs into the RPSCMA until December 31, 2010. These costs may be recorded when paid, for later recovery via generation rates. We shall limit the total amount (that will in turn be prorated to the three IOUs) to a cap of \$400,000 annually.”

b. To:

“The IOUs are authorized to record these RPS third party technical support costs into the RPSCMA until September 30, 2014. These costs may be recorded when paid, for later recovery via generation rates. We shall limit the total amount (that will in turn be prorated to the three (IOUs) to a cap of \$400,000 annually, with the cumulative total cost not to exceed \$1.6 million.”

Paragraph 2 of Appendix A

2. Conclusion of Law 24:

a. From:

⁴ In the advice letter, SDG&E must make clear its plan for maintaining and administering its new RPSCMA in a manner that will both meet the requirements of this decision and not cause confusion with the order in D.11-10-029.

“PG&E, SCE, and SDG&E should be authorized to establish a RPSCMA, or modify existing RPSCMAs, to record these RPS technical contractor costs into the RPSCMA until December 31, 2010; the costs should be recorded when paid; each IOU should be authorized to later apply to recover these costs via rates; the costs should be subject to a limit on the total prorated amount to the three IOUs of \$400,000 annually.”

b. To:

“PG&E, SCE, and SDG&E should be authorized to establish a RPSCMA, or modify existing RPSCMAs, to record these RPS technical contractor costs into the RPSCMA until September 30, 2014; the costs should be recorded when paid; each IOU should be authorized to later apply to recover these costs via rates; the costs should be subject to a limit on the total prorated amount to the three IOUs of \$400,000 annually, with the cumulative total cost not to exceed \$1.6 million.”

Paragraph 3 of Appendix A

3. Ordering Paragraph 8:

a. From:

“The Executive Director may hire and manage one or more contractors to perform tasks described in this order for the purpose of advancing RPS Program goals. Such costs, if any, shall not exceed a total annual amount of \$400,000, and the total shall be paid by PG&E, SCE, and SDG&E on a proportional basis in relationship to retail sales reported each year in the March 1 RPS compliance report (or other first report each year as directed by the Executive Director). PG&E and SDG&E are authorized to establish a Renewables Portfolio Standard Costs Memorandum Account (RPSCMA) for the purpose of recording such payments. SCE is authorized to modify its existing RPSCMA to record such payments. PG&E, SCE, and SDG&E are authorized to record these RPS technical contractor costs into the RPSCMA until December 31, 2010. These

costs shall be recorded when paid, and each company may later apply for recovery in rates.”

b. To:

“The Executive Director may hire and manage one or more contractors to perform tasks described in this order for the purpose of advancing RPS Program goals. Such costs, if any, shall not exceed a total annual amount of \$400,000, with the cumulative total cost not to exceed \$1.6 million, and the total shall be paid by PG&E, SCE, and SDG&E on a proportional basis in relationship to retail sales reported each year in the March 1 RPS compliance report (or other first report each year as directed by the Executive Director). PG&E and SDG&E are authorized to establish a Renewables Portfolio Standard Costs Memorandum Account (RPSCMA) for the purpose of recording such payments. SCE is authorized to modify its existing RPSCMA to record such payments. PG&E, SCE, and SDG&E are authorized to record these RPS technical contractor costs into the RPSCMA until September 30, 2014. These costs shall be recorded when paid, and each company may later apply for recovery in rates.”

These modifications will serve to allow the three IOUs to process and record payment for the one outstanding invoice for work performed in 2011. Once that has been done, and the IOUs apply for recovery in rates of their shares of payment for the invoice, no further expenses authorized by D.06-10-050 should be recorded in the RPSCMAs for each of the IOUs.⁵

⁵ The RPSCMAs will remain open to the record expenses authorized in D.11-04-030 at OP 8.

4. Comments on Proposed Decision

The proposed decision (PD) of Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on April 2, 2014, by PG&E, SCE, and SDG&E (jointly). No reply comments were filed. The PD has been revised in response to comments.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Anne Simon is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. As a result of inadvertent error, the IOUs have not been able to pay for consultant work authorized and performed within the time set by D.11-01-016 and record such payment in their respective RPSCMAs within the time authorized for such payment and recording.
2. The amount for which the IOUs should provide payment is now clear and undisputed.
3. SDG&E's RPSCMA account was closed by D.11-10-029.

Conclusions of Law

1. The Petition should be granted and D.11-01-016 should be modified to permit the IOUs to pay the currently outstanding invoice and record the payments in their respective RPSCMAs as soon as reasonably possible.
2. The modification of D.11-01-016 will effectively modify D.06-10-050 as well.
3. In order to carry out the requirements of this decision, SDG&E should establish a new RPSCMA.

4. In order to allow the payment of the outstanding invoice to be made expeditiously, this decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 11-01-016 filed jointly by Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, dated January 13, 2014, is granted.

2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company must establish a new Renewables Portfolio Standard Costs Memorandum account via a Tier 1 advice letter.

3. Decision 11-01-016 is modified by replacing its Appendix A with the following:

APPENDIX A

MODIFIED LANGUAGE IN DECISION 06-10-050

The following language in Decision 06-10-050 is modified:

1. At mimeo pages 53-54:

a. From:

"The IOUs are authorized to record these RPS third party technical support costs into the RPSCMA until December 31, 2010. These costs may be recorded when paid, for later recovery via generation rates. We shall limit the total amount (that will in turn be prorated to the three IOUs) to a cap of \$400,000 annually."

b. To:

"The IOUs are authorized to record these RPS third party technical support costs into the RPSCMA until September 30, 2014. These costs may be recorded when paid, for later recovery via generation rates. We shall

limit the total amount (that will in turn be prorated to the three IOUs) to a cap of \$400,000 annually, with the cumulative total cost not to exceed \$1.6 million.”

2. Conclusion of Law 24:

a. From:

“PG&E, SCE, and SDG&E should be authorized to establish a RPSCMA, or modify existing RPSCMAs, to record these RPS technical contractor costs into the RPSCMA until December 31, 2010; the costs should be recorded when paid; each IOU should be authorized to later apply to recover these costs via rates; the costs should be subject to a limit on the total prorated amount to the three IOUs of \$400,000 annually.”

b. To:

“PG&E, SCE, and SDG&E should be authorized to establish a RPSCMA, or modify existing RPSCMAs, to record these RPS technical contractor costs into the RPSCMA until September 30, 2014; the costs should be recorded when paid; each IOU should be authorized to later apply to recover these costs via rates; the costs should be subject to a limit on the total prorated amount to the three IOUs of \$400,000 annually, with the cumulative total cost not to exceed \$1.6 million.”

3. Ordering Paragraph 8:

a. From:

“The Executive Director may hire and manage one or more contractors to perform tasks described in this order for the purpose of advancing RPS Program goals. Such costs, if any, shall not exceed a total annual amount of \$400,000, and the total shall be paid by PG&E, SCE, and SDG&E on a proportional basis in relationship to retail sales reported each year in the March 1 RPS compliance report (or other first report each year as directed by the Executive Director). PG&E and SDG&E are authorized to establish a Renewables Portfolio Standard Costs Memorandum Account

(RPSCMA) for the purpose of recording such payments. SCE is authorized to modify its existing RPSCMA to record such payments. PG&E, SCE, and SDG&E, are authorized to record these RPS technical contractor costs into the RPSCMA until December 31, 2010. These costs shall be recorded when paid, and each company may later apply for recovery in rates.”

b. To:

“The Executive Director may hire and manage one or more contractors to perform tasks described in this order for the purpose of advancing RPS Program goals. Such costs, if any, shall not exceed a total annual amount of \$400,000, with the cumulative total cost not to exceed \$1.6 million, and the total shall be paid by PG&E, SCE, and SDG&E on a proportional basis in relationship to retail sales reported each year in the March 1 RPS compliance report (or other first report each year as directed by the Executive Director). PG&E and SDG&E are authorized to establish a Renewables Portfolio Standard Costs Memorandum Account (RPSCMA) for the purpose of recording such payments. SCE is authorized to modify its existing RPSCMA to record such payments. PG&E, SCE, and SDG&E are authorized to record these RPS technical contractor costs into the RPSCMA until September 30, 2014. These costs shall be recorded when paid, and each company may later apply for recovery in rates.”

4. Rulemaking 06-05-027 is closed.

This order is effective today.

Dated _____, at Los Angeles, California.